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10/808,950	03/25/2004	Edward O. Clapper	INT-22	6351

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EXAMINER
ULRICH, NICHOLAS S

ART UNIT	PAPER NUMBER
2173	

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10/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,950	CLAPPER, EDWARD O.	
	Examiner	Art Unit	
	Nicholas S. Ulrich	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19 and 21-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-10 and 21-25* is/are allowed.

6)☐ Claim(s) *11-16 and 18* is/are rejected.

7)☐ Claim(s) *17 and 19* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-19 and 21-25 are pending.

2. Claims 1, 2, 3, 5, 6, 7, 8, 9, 11, 13, 14, 17, 19, 21, 22, 23, 24, and 25 have been amended

3. Claims 20, 26, and 27 have been cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu (US 7100068 B2) in view of DE 20315282 U.

Reference, DE 20315282 U, will be referred to as *Derwent* throughout the action.

In regard to claim 11, Shyu discloses a performance control apparatus, comprising:

a selector for designating one of several settings in a processor-based system, wherein each setting is associated with one or more performance-related criteria of the processor-based system (Column 2 lines 54-58: selector unit, with multiple adjustment stages);

and a display comprising an indicator, wherein the indicator visually conveys a relative performance value for the processor-based system (Column 3 lines 8-17).

While Shyu teaches a selector for modifying a processor clock rate, they fail to show the plurality of selectors as recited in the claims. Derwent teaches a selector similar to that of Shyu. In addition, Derwent further teaches a selector for modifying a fan speed (See abstract/novelty). It would have been obvious to one of ordinary skill in the art, having the teachings of Shyu and Derwent before him at the time the invention was made, to modify the system taught by Shyu to include the selector of Derwent, in order to obtain a plurality of selectors for modifying performance related criteria of a processor based system. It would have been advantageous for one to utilize such a combination so the user can set the speed so that adequate cooling is achieved without excessive noise, as taught by Derwent (Abstract/advantage).

In regard to claim 12, Shyu discloses a first label and a second label, the first and second labels being disposed adjacent to the selector, wherein the first label designates a minimum setting of the selector and the second label designates a maximum setting of the selector *(Column 3 lines 28-37: The use of speed bars is used as a label to specify minimum and maximum values for the selector. When using the selector to increase a value, speedbars will be added up to 10, to indicate 10 is the maximum setting. Likewise, decreasing value will deduct speedbars, until the minimum setting of I bar is displayed. Therefore 1 bar labels minimum setting and 10 bars labels maximum setting).*

5. Claims 13, 14, 15, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu in view of DE 20315282 U and Sato (US 6627829 B2).

In regard to claim 13 and 16, Shyu fails to disclose further comprising a plurality of light-emitting diodes, the plurality of light-emitting diodes being disposed adjacent to the selector, wherein one or more of the plurality of light-emitting diodes changes to a first color when the selector is not at the minimum setting and wherein the light emitting diodes change to a second color.

However, Sato discloses a plurality of light-emitting diodes, the plurality of light-emitting diodes being disposed adjacent to the selector, wherein one or more of the plurality of light-emitting diodes changes to a first color when the selector is not at the minimum setting *(Abstract and Column 5 lines 1-15)* and changes to a second color *(Column 2 lines 40-47)*. Although Shyu does not disclose a plurality of led's adjacent the selector, Shyu does disclose an indicator to determine the setting of the selector *(Column 3 lines 28- 37: The speedbar is used to show the selection of the selector). Therefore, Shyu shows motivation towards Sato's invention for including an indicator to show selection of the selector. The use of a speedbar is merely a design choice by Shyu.*

Therefore, at the time of the invention it would have been obvious to one skilled in the art to combine the teachings of Sato with Shyu's invention in order to provide led's that indicate the selection of the selector.

In regard to claim 14, the combination of Shyu and Derwent, as discussed in the rejection of claim 11, results in two selectors. The first selector, taught by Shyu, controls the processor clock rate. The second selector, taught by Derwent, controls the fan speed *(See rejections of claim 11 for reference citations).*

In regard to claim 15, Shyu discloses wherein the processor clock rate may exceed an optimum clock rate *(Column 3 lines 26- 35: Optimum clock rate is achieved in normal status, wherein the processor is run at its normal operational state. Therefore, when speeding up the processor past its normal status, it will exceed its optimal operational state).*

In regard to claim 18, Shyu discloses wherein the display further comprises a second indicator, wherein the second indicator visually conveys processor temperature *(Column 3 lines 10-17).*

Allowable Subject Matter

6. Claim 1-10 and 21-25 are allowed.

7. Claims 17 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowable Subject Matter

8. Independent claim 1 recites the limitation "a performance control application program with a graphical user interface, the graphical user interface comprising at least one application program selector associated with an application program loaded in the processor-based system, wherein the application program selector is adjustable between a second minimum setting and a second maximum setting; wherein the at least one application program selector enables a user to modify the one or more performance criteria during operation of the application program". While the cited prior art reference, Cline et al. (US 5550970), discloses a user interface that comprises an application program selector for adjusting between a minimum and maximum setting, they fail to disclose allowing the user to modify one or more performance criteria. Cline invention is directed towards allocating the amount of RAM usage for each application running on the system, however, the claim recites that performance criteria includes, processor clock rate, fan speed, and disk usage. Cline fails to teach modifying clock rate, fan speed, or disk usage.

A detailed search of the prior art was performed and no significant sources were located that teach or suggest the above cited limitation of claim 1. Therefore claim 1, and all dependent claims 2-10 are allowable over the prior art.

9. Independent claims 21 and 24 recite similar features, as discussed in independent claim 1, and is allowable over the prior art for the same reasons. Claims 22, 23, and 25 depend from allowable independent claims 21 and 24.

10. Dependent claim 17 is allowable over the prior art because no teaching or motivation could be found in the art that discloses controlling both the processor clock rate and the fan speed simultaneously with one selector.

11. Dependent claim 19 is allowable over the prior art because no teaching or motivation could be found that discloses using a selector to adjust between an application program being executed from the disk drive and being executed from a volatile memory.

Response to Arguments

12. Applicant's arguments with respect to claims 11, 12, 13-16, 17, 18, and 19 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments, see Remarks, filed 8/18/2007, with respect to claims 1-10 and 21-25 have been fully considered and are persuasive.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas S. Ulrich whose telephone number is 571-270-1397. The examiner can normally be reached on M-TH 9:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on 571-272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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10/23/2007
2173

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